

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACLYN A. FISHER, STEPHANIE
GRAVES, HEATHER HUFF, CHERYL
KOMENDA, JOSETTE LABREC, JESSICA
LOEPP, ANN MARKHAM-SIMMONS,
BRENDA MATSON, CAROL MCNITT,
MOHAMED KHOCHTALI, IRENE
MENDOZA, MIKKI PERSON, MICHELLE
STRAWN, ANNETTE VANSCHOYCK,
JENNIFER ANDERSON, MAYRA
BACKAN, LEAH BRACKEN, DANIELLE
CARTER, CHARLOTTE CHAPMAN,
CHALISE CROWDER, MONICA FIERRO,
JENNIFER HARDIN, REBECCA JOHNSON,
SHANNON KENYON, JENNIFER KOGOD,
STEPHANIE LEATHAM, NADINE
MANUEL, KERRI MCCLOUD, DONNA
MUEHL, DAWN NEPSUND, NICOLE
PETERSON, NATALIE REED, BEVERLY
RICHESON, DAWN SANCHEZ, JAMIE
LYN SCHULER, CATRINA STEWART,
CHRISTINE VANDERHOFF, LATOYA
WADE, CRISTIN WEST, LEMICUA
WILSON, MYRIAM ZAYAS, and JANE or
JOHN DOES 1-30,

Plaintiffs,

v.

CORINTHIAN COLLEGES, INC.,a
Washington corporation, d/b/a BRYMAN
COLLEGE, TACOMA CAMPUS,

Defendant.

Case No. C05-5412FDB

ORDER GRANTING CORINTHIAN
COLLEGES INC.'S MOTION TO
COMPEL ARBITRATION OF
SELECT PLAINTIFFS

INTRODUCTION

Plaintiffs are forty-one Washington residents who attended the medical assistant program at
Bryman College or its legal predecessor, Eton Technical Institute, between 2003 and 2005. Plaintiffs

1 assert that there were misrepresentations made, which enticed them to enroll at Bryman. This matter
2 was removed from Pierce County Superior Court based on diversity jurisdiction, plaintiffs all being
3 Washington residents and Defendant Corinthian Colleges, Inc. being a Delaware corporation with its
4 principal place of business in California, and the amount in controversy exceeds \$75,000.

5 Defendants move to compel arbitration of twenty-one select plaintiffs: (1) Pursuant to the
6 terms of the arbitration provisions contained in their written enrollment agreements: Jaclyn A.
7 Fisher, Stephanie Graves, Heather Huff, Cheryl Komenda, Josette Labrec, Jessica Loepp, Ann
8 Markham-Simmons, Brenda Matson, Carol McNitt, Mohamed Khochtali, Irene Nevarez Mendoza,
9 Mikki Person, Michelle Strawn, Annette Vanschoyck, Jennifer Kogod, Stephanie Leatham, Nadine
10 Manuel, Nicole Peterson, Natalie Reed, and Lemicua Wilson; and (2) pursuant to the terms of the
11 arbitration provision contained in her Sallie Mae Loan documents: Chalise Crowder.

12 Plaintiffs oppose arbitration arguing that (1) no authority has been cited for the proposition
13 that an arbitration clause in a for-profit career college enrollment agreement affects interstate
14 commerce and triggers coverage under the Federal Arbitration Act, 9 U.S.C. § 1-16 (F.A.A.); (2) no
15 notice pursuant to RCW 7.04.060 was served upon the plaintiffs indicating Bryman's intention to
16 arbitrate, rather, it simply filed its motion to compel arbitration; (3) the public policy against fraud in
17 connection with the provision of educational services outweighs the public policy in favor of
18 arbitration; (4) Plaintiff Crowder contends that the Sallie Mae Loan agreement, which contains an
19 arbitration clause cannot force her to arbitrate with Bryman and because it is Sallie Mae should not
20 be deciding whether Crowder will have to pay costs of arbitration; and (5) there is no showing that
21 plaintiffs have made a knowing voluntary, and intelligent waiver of their constitutional right to jury
22 trial.

ANALYSIS AND CONCLUSION

1
2 **1.** There is a sufficient interstate commerce connection to conclude that the Federal
3 Arbitration Act applies to the transactions in this case. The United States Supreme Court has stated
4 as follows with respect to whether a contract or transaction affects interstate commerce:

5 We have interpreted the term “involving commerce” in the FAA as the functional
6 equivalent of the more familiar term “affecting commerce” – words of art that
7 ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause
8 power.

9 *The Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003). Although the specific transaction, by
10 itself may not have an effect on interstate commerce, the F.A.A. may still apply:

11 Congress’ Commerce Clause power “may be exercised in individual cases without
12 showing any specific effect upon interstate commerce” if in the aggregate the
13 economic activity in question would represent “a general practice ... subject to federal
14 control.”

15 *Id.* at 56-57. Congress may regulate private vocational schools and it does so under Chapter 32 of
16 Title 20 U.S.C. “Vocational Education.” The U.S. Department of Education’s Student Financial Aid
17 Program is administered under Title IV of the U.S. Code and the Higher Education Act, 20 U.S.C. §
18 1071. The Department of Education regulates national accrediting agencies, who establish standards
19 for private vocational schools. Bryman has campuses in four different states and Corinthian Colleges
20 operates in at least twenty-four states. The multi-state nature of Corinthian and Bryman sufficiently
21 indicates that the transactions at issue herein involve interstate commerce and implicate the F.A.A.

22 *See Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265 (1995)(multi-state nature of parent
23 company was sufficient indication that transaction involved interstate commerce to implicate F.A.A.)
24 The facts and relevant authorities demonstrate that the F.A.A. applies in this case.

25 **2.** Allegations of fraud or fraudulent inducement to contract do not render the agreement
26 unenforceable under the circumstances of this case. The United States Supreme Court in *Prima*
Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 402 -04 (1967) explained as follows:

1 Having determined that the contract in question is within the coverage of the
 2 Arbitration Act we turn to the central issue in this case: whether a claim of fraud in
 3 the inducement of the entire contract is to be resolved by the federal court, or whether
 4 the matter is to be referred to the arbitrators. ... Under § 4 [of the FAA], with respect
 5 to a matter within the jurisdiction of the federal courts save for the existence of an
 6 arbitration clause, the federal court is instructed to order arbitration to proceed once
 7 it is satisfied that “the making of the agreement for arbitration or the failure to comply
 8 [with the arbitration agreement] is not in issue. **Accordingly, if the claim is fraud in
 9 the inducement of the arbitration clause itself – an issue which goes to the
 10 making of the agreement to arbitrate – the federal court may proceed to
 11 adjudicate it. But the statutory language does not permit the federal court to
 12 consider claims of fraud in the inducement of the contract generally.**

13 Here, Plaintiffs’ claims are unrelated to the arbitration agreement. Plaintiffs claims relate to alleged
 14 misrepresentations concerning accreditation, transferability of credits, instructor quality, externships,
 15 post-graduation job placement. There are no allegations made about specific misrepresentations
 16 made about the Arbitration Agreement itself.

17 **3.** Sufficient notice of Bryman’s intent to arbitrate was provided by the filing of the motion
 18 to compel arbitration. First, a state statute cannot preclude arbitration where as here the Federal
 19 Arbitration Act pre-empts state law. *Allied-Bruce Terminix Cos., Inc.*, 513 U.S. at 272. The motion
 20 to compel operates to serve notice on the plaintiffs of Bryman’s intent to arbitrate and to give the
 21 plaintiffs an opportunity to object, which they have.

22 **4.** Because the F.A.A. applies to Plaintiffs’ claims, state public policy arguments cannot
 23 invalidate the arbitrations agreements. *See, e.g., Allied-Bruce Terminix Cos. Inc.*, 513 U.S. at 272.

24 **5.** Plaintiffs made a knowing, voluntary, and intelligent waiver of their constitutional right to
 25 a jury trial. Each of the Plaintiffs signed his or her Enrollment Agreement in two different places –
 26 once to generally accept the terms of the Agreement, and again, to specifically acknowledge and
 accept the terms of the mandatory arbitration provision. (See Declaration of Rogers, Ex. 1-20.) The
 language in the waiver is written plainly and clearly (see quoted language in Defendant’s motion to
 compel and in reply), there is no showing that Plaintiffs did not have an opportunity to read these
 provisions or that they were pressured into signing them.

1 6. Plaintiff Crowder's claims must be arbitrated. Crowder argues that she may have to pay
2 arbitration costs and will be precluded from seeking attorneys' fees. Crowder offers no specific
3 information about arbitration fees that she will be required to pay nor how the fees would effectively
4 prohibit her from bringing her claims. Crowder has not shown that the costs are prohibitive, and, in
5 any event, there is a provision under the Agreement that she may request the American Arbitration
6 Association to waive the costs or that Defendant pay her portion of the costs.

7 Crowder also argues that the arbitration agreement prohibits her from seeking attorneys' fees
8 under her Consumer Protection Act claim. This is not necessarily true. There is a presumption
9 under Washington law that the arbitrator would not disregard established case law holding that a
10 prevailing party on a Consumer Protection Act claim is entitled to legal fees. As in *Zuver v. AirTouch*
11 *Communications*, 153 Wn.2d 293, 103 P.3d 753 (2004), Plaintiffs have failed to make other than a
12 speculative showing on the costs and fees issues.

13 Accordingly, for the foregoing reasons, Corinthian Colleges, Inc.'s Motion to Compel
14 Arbitration must be granted.

15 NOW, THEREFORE,

16 IT IS ORDERED:

- 17 1. Defendant Corinthian Colleges, Inc.'s Motion To Compel Arbitration of Select
18 Plaintiffs (Dkt. # 8) is GRANTED as to the following plaintiffs: Jaclyn A. Fisher,
19 Stephanie Graves, Heather Huff, Cheryl Komenda, Josette Labrec, Jessica Loepp,
20 Ann Markham-Simmons, Brenda Matson, Carol McNitt, Mohamed Khochtali, Irene
21 Nevarez Mendoza, Mikki Person, Michelle Strawn, Annette Vanschoyck, Jennifer
22 Kogod, Stephanie Leatham, Nadine Manuel, Nicole Peterson, Natalie Reed, Lemicia
23 Wilson, and Chalise Crowder.

DATED this 9th day of August, 2005.

ORDER - 6